In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 609

CHARLES H. RUBY ET AL., PETITIONERS

v.

AMERICAN AIRLINES, INC., RESPONDENT

AND

NICHOLAS J. O'CONNELL ET AL., ADDITIONAL RESPONDENTS

AND

JOSEPH V. MANNING ET AL., INTERVENORS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL MEDIATION BOARD AS AMICUS CURIAE

STATEMENT

This suit arises out of a struggle between competing unions for the representation of airline pilots and co-pilots at American Airlines. During the course of negotiations between American Airlines and a negotiating committee for Airline Pilots Association,

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International (ALPA), certain differences arose between the negotiating committee and the central organization of ALPA. Because the differences could not be resolved and in order to prevent the pilots and American from dismissing ALPA as their bargaining representative to American Airlines, petitioner brought this suit against the carrier and certain of its pilots to enjoin American from bargaining with anyone other than petitioner and charging company interference, domination and coercion of employees.

The suit was initiated on March 1, 1963. Shortly thereafter, a new union was organized among the pilots and co-pilots at American Airlines, *viz.*, Allied Pilots Association (Allied). On April 24, 1963, Allied applied to the National Mediation Board for an investigation and for a certification of a true bargaining representative for the pilots at American. A mediator was assigned to conduct an investigation. The petitioner's charges of company interference with the pilots' rights to organize were studied and considered by the Board. After investigation, the Board concluded, in early June, that a representation election by secret ballot should be held and that there was no merit to the charges of interference and coercion by the carrier.[1]

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[1] Petitioners instituted a separate action in the United States District Court for the District of Columbia seeking to enjoin the National Mediation Board from proceeding to hold an election. After judgment was entered for the Board, it proceeded to conduct an election. On November 13, 1963, the Board certified that the Allied Pilots Association had been selected as the authorized representative for the pilots at

After a five-week trial in the Southern District of New York, during which more than 3,000 pages of testimony were received in evidence, witnesses for all parties were heard and the legal issues were fully argued and briefed (Affidavit of Ruby dated June 11, 1963, par. 11), Judge Wyatt found that ALPA's claims against American Airlines and the negotiating committee were unfounded. He entered detailed findings of fact (Pet. 21a–82a) and concluded that the central issue in the case was the identity of the true representative of the employees—an issue that could be decided only by the National Mediation Board under Section 2, Ninth, of the Railway Labor Act (45 U.S.C. 152, Ninth) (Pet. 74a). (The Board was not a party to the New York action.) And, relying on *General Committee* v. *Missouri-Kansas-Texas R. Co.*, 320 U.S. 323, Judge Wyatt dismissed ALPA's suit for lack of jurisdiction (Pet. 83a–85a).

On appeal, the Second Circuit unanimously affirmed the district court's determination that ALPA's claims against the carrier were unsubstantiated. 323 F. 2d 248. It held that the essential matter in dispute is ALPA's claim to represent the pilots at American, "a subject which Congress has given the Mediation Board the duty to determine." 323 F. 2d at p. 254 (Pet. 15a). It further held that, on the facts in this

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American Airlines. A copy of the Board's certification is attached to American Airlines' brief in opposition. The Board's certification shows that, out of 1,551 eligible employees, 1,280 voted for Allied and 99 voted for ALPA.

record, the Board had fully performed its duty to investigate and to certify (Pet. 15a):

> * * * the Board's manner of investigation was not only as good but better under the circumstances. As we are told by an affidavit of its Assistant Executive Secretary, it utilized pleadings, exhibits, and portions of the record already made in this action, which each of the three members reviewed. In addition, it had the important benefit of its own intimate knowledge of the negotiations, derived from the participation of its representatives therein. ALPA has told us of no additional material facts it would have presented if the Board had given it a further opportunity; its complaint relates not so much to the adequacy of the information before the Board as to the Board's conclusion that no wrong had been done. We see no more basis for judicial interference with that conclusion than with the conclusion in the *Switchmen's* case that the New York Central's yardmen should vote on a system-wide basis. See 320 U.S. at 301, 305.

ARGUMENT

1. This is a struggle between rival groups to serve as the representative of the pilots at American Airlines. The National Mediation Board is the proper agency to certify the bargaining representative as between competing unions. Acting within the scope of its authority, the Board has conducted an election and the pilots have overwhelmingly demonstrated their choice.[2]

[2] See note 1, *supra*.

It is well settled that the Board's certification of the bargaining representative is final. Over twenty years ago, in the *Switchmen's Union* and companion cases this Court held that issues arising under Section 2, Ninth, of the Railway Labor Act, including questions as to who is entitled to represent the employees, have been delegated by Congress to the National Mediation Board for settlement and are not judicially reviewable. *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297; *General Committee* v. *Missouri-Kansas-Texas R. Co.*, 320 U.S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338. This doctrine has been consistently followed. *Brotherhood of Railway & Steamship Clerks* v. *United Transport Service Employees*, 320 U.S. 715, reversing 137 F. 2d 817 (C.A.D.C.); *Steele* v. *L. & N. R. Co.*, 323 U.S. 192, 205; *United Transport Service Employees* v. *National Mediation Board*, 179 F. 2d 446 (C.A.D.C.); *Air Line Stewards and Stewardesses Ass'n* v. *National Mediation Board*, et al., 294 F. 2d 910 (C.A.D.C.), certiorari denied, 369 U.S. 810; *Flight Engineers' Int. Ass'n* v. *Eastern Air Lines*, 311 F. 2d 745 (C.A. 2), certiorari denied, 373 U.S. 924; *UNA Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Board*, 294 F. 2d 905 (C.A.D.C.), certiorari denied, 368 U.S. 956; *Rose* v. *Brotherhood of Railway and Steamship Clerks*, 181 F. 2d 944 (C.A. 4), certiorari denied, 340 U.S. 851; *Kirkland et al.* v. *Atlantic Coast Line R. Co.*, 167 F. 2d 529 (C.A.D.C.), certiorari denied, 335 U.S. 843; *National Federation of Railway Workers* v. *National Mediation Board*, 141 F. 2d 725 (C.A.D.C.); *United Transport Service*

Employees of America v. *National Mediation Board*, 141 F. 2d 724 (C.A.D.C.); *Rutas Aereas Nacionales S.A.* v. *Edwards et al.*, 244 F. 2d 784 (C.A.D.C.); *Brotherhood of Railway & Steamship Clerks, etc.* v. *Virginian Ry Co.*, 125 F. 2d 853 (C.A. 4).

Moreover, when, as in this suit, the Board is not a party to the litigation, there is added reason to conclude that the Board's determination and certification are immune to attack. *Order of Conductors* v. *Penn. R. Co.*, 323 U.S. 166. This Court there stated (p. 172):

> * * * Since the election and certification could not be annulled without making the board a party, that result cannot be obtained by indirection by having the court substitute itself for the board, or declare, independently of the board, who is the accredited representative of the plaintiff.[3]

2. Both courts below also found that there was no employer interference or coercion. There is no occasion for further review of these findings. As Judge Friendly pointed out in the opinion below, a representative of the Board participated actively in the negotiations (Pet. 15a). Thus, the Board had first-hand and intimate knowledge of the dealings between the carrier and the employees. In addition, the

[3] In the District of Columbia suit, to which the Board is a party, the district court also held—properly, we submit—that the Board's determination is not judicially reviewable and accordingly not enjoinable. The suit was initiated before the Board conducted the election or made the certification. It attempted to prevent the Board's exercise of these duties. See note 1, *supra*.

Board examined the exhaustive record compiled in the proceedings before Judge Wyatt. Its conclusion that there was no interference by the company was amply supported and, as pointed out by Judge Friendly, petitioner has pointed to no additional material facts which it could have presented if it had had further opportunity for airing its charges.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

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